

EMERGENCY ORDINANCE NO. 42309

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2
3 AN EMERGENCY ORDINANCE pursuant to City of Omaha Charter Section 2.13; to add
4 Article III, Sections 12-41 through 12-52, entitled "Prevention of COVID-19," to Chapter
5 12 of the Omaha Municipal Code; to provide legislative findings and intent; to require
6 individuals to wear facial coverings and exceptions thereof; to provide for the
7 enforcement of violations and penalties; to establish a sunset provision; and to provide
8 the effective date hereof.

9 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

10 Section 1. That as a result of Novel Coronavirus (COVID-19) pandemic and with an
11 increased number of confirmed COVID-19 cases within the City limits of the City of Omaha and
12 the closing of numerous city and private facilities, an emergency exists authorizing action under
13 City of Omaha Charter Section 2.13 which allows for passage of an ordinance with one reading.
14 This ordinance seeks to impose a non-pharmaceutical intervention to combat the spread of
15 COVID-19 and to halt the progression thereof.

16 Section 2. That Chapter 12, Article III, Section 12-41 through Section 12-52 of the
17 Omaha Municipal Code is hereby created as follows:

18 **ARTICLE III. – PREVENTION OF COVID-19**

19 **Sec. 12-41. – Legislative Findings and Intent.**

20 (1) The City Council hereby finds and declares, based upon the scientific and medical
21 evidence before it, that:

22 (a) the Novel Coronavirus (COVID-19) has impacted and continues to dramatically
23 impact the citizens of the City of Omaha, Nebraska; and

24 (b) exposure to COVID-19 presents a risk of death or serious long-term disability; the
25 exposure is widespread and poses significant risk of harm, including death, to
26 people in the general population of the City of Omaha; there is a particular subset of
27 the population that is more vulnerable to the threat and thus at an increased risk; and
28 the threat is from a novel infectious disease; and

- 1 (c) information from the World Health Organization, the CDC, Nebraska Department
2 of Health and Human Services, the Douglas County Health Department, local
3 public health departments throughout Nebraska, and members of the City of Omaha
4 and Douglas County medical community indicates that citizens of the City of
5 Omaha have been and will continue to be exposed due to community transmissions
6 of COVID-19; and
- 7 (d) the manner in which the spread of COVID-19 cases in the City of Omaha has
8 occurred creates an unacceptable risk to the health, safety, and welfare of the
9 citizens of the City of Omaha; and
- 10 (e) the number of COVID-19 infections within the City of Omaha continues to
11 increase; and
- 12 (f) COVID-19 constitutes a public nuisance and a threat to the health, safety, and
13 welfare of the City of Omaha; and
- 14 (g) The Director of the United States Centers for Disease Control and Prevention
15 (CDC), the Health Director for the City of Omaha, doctors and infectious disease
16 experts from the University of Nebraska Medical Center and Nebraska Medicine, as
17 well as the Metro Omaha Medical Society, have concluded that the wearing of face
18 coverings by every individual while in public is one of the best methods to slow and
19 stop the spread of COVID-19; and
- 20 (h) the wearing of face coverings by every individual while indoors in public places in
21 the City of Omaha will reduce community transmissions of COVID-19, resulting in
22 fewer deaths, serious health complications, and will ease the strain on hospitals and
23 other medical offices and facilities; and
- 24 (i) the wearing of face coverings by every individual while indoors in public places in
25 the City of Omaha will help keep businesses open and operating, encouraging
26 economic growth and preventing prolonged economic harm; and
- 27 (j) it is just and proper for the City Council to exercise the authority granted to it by the
28 Home Rule Charter of the City of Omaha and Nebraska statutes in furtherance of
29 protecting the public health, safety, and welfare.

30 **Sec. 12-42. – Definitions.**

31 For purposes of this Article, the following terms are defined as follows:

- 32 (1) **Face Covering.** – A face covering is defined as a covering which, when worn properly,
33 must cover the nose and mouth completely and can include a paper or disposable face
34 mask, a cloth face mask, a scarf, a bandanna, a neck gaiter, or a religious face covering.
35 Medical-grade masks and respirators are sufficient face coverings, but to preserve
36 adequate supplies, their purchase and use is discouraged for those who do not work in a
37 health care setting or in other occupations that require medical-grade personal protective
38 equipment. Masks that incorporate a valve designed to facilitate easy exhaling, mesh
39 masks, or masks with openings, holes, visible gaps in the design or material, or vents are

1 not sufficient face coverings because they allow exhaled droplets to be released into the
2 air.

3 **(2) Premises That Are Open to the General Public.** – Premises that are open to the
4 general public are broadly defined to include entities that employ or engage workers,
5 including private-sector entities, public-sector entities, non-profit entities, regular
6 commercial or business establishments, private clubs, religious centers or buildings,
7 public transportation (including buses, taxis, ride-sharing vehicles, or vehicles used for
8 business purposes), and any place which is generally open to the public, including
9 educational institutions and daycare facilities.

10 **Sec. 12-43. – Individual Facial Coverings Required.**

11 All individuals age five (5) and older shall wear a face covering over their mouth and nose while
12 indoors in a premises that is open to the general public including, but not limited to, educational
13 institutions, unless the individual maintains a minimum of six (6) feet of separation or social
14 distance at all times from anyone who is not a member of the individual’s household, except face
15 coverings will not be required if the individual:

- 16 (1) is seeking federal, state, county, or city governmental services;
17 (2) is seated at a bar or restaurant to eat or drink, or while immediately consuming food or
18 beverages;
19 (3) is engaged in an occupation preventing the wearing of a face covering;
20 (4) is obtaining a service or purchasing goods or services that requires the temporary
21 removal of the face covering;
22 (5) is asked to remove a face covering to verify an identity for lawful purposes;
23 (6) is providing a speech, lecture, or broadcast to an audience so long as six (6) feet of
24 distancing from other individuals is maintained; or
25 (7) cannot otherwise wear a face covering because of a medical condition, a mental health
26 condition, or a disability that makes it unreasonable for the individual to wear a face
27 covering.

28 Nothing in this section shall prohibit the owner or person in charge of a premises that is open to
29 the general public from requiring an individual to wear a face covering during any of the
30 circumstances enumerated above or from implementing a more restrictive face covering policy.

31 **Sec. 12-44. – Premises That Are Open to the Public – Duty to Require Facial Coverings.**

32 Any individual or entity which maintains premises that are open to the general public including,
33 but not limited to, educational institutions, shall require all individuals age five (5) and older to
34 wear a face covering over their mouth and nose while indoors in said premises, unless the
35 individual maintains a minimum of six (6) feet of separation or social distance at all times from
36 anyone who is not a member of the individual’s household, except face coverings will not be
37 required if the individual:

- 1 (1) is seeking federal, state, county, or city governmental services;
- 2 (2) is seated at a bar or restaurant to eat or drink, or while immediately consuming food or
3 beverages;
- 4 (3) is engaged in an occupation preventing the wearing of a face covering;
- 5 (4) is obtaining a service or purchasing goods or services that requires the temporary
6 removal of the face covering;
- 7 (5) is asked to remove a face covering to verify an identity for lawful purposes;
- 8 (6) is providing a speech, lecture, or broadcast to an audience so long as six (6) feet of
9 distancing from other individuals is maintained; or
- 10 (7) cannot otherwise wear a face covering because of a medical condition, a mental health
11 condition, or a disability that makes it unreasonable for the individual to wear a face
12 covering.

13 Nothing in this section shall prohibit the owner or person in charge of a premises that is open to
14 the general public from requiring an individual to wear a face covering during any of the
15 circumstances enumerated above or from implementing a more restrictive face covering policy.

16 **Sec. 12-45. – Notice of Face Covering Requirements.**

17 Any individual or entity which maintains premises that are open to the general public, including
18 but not limited to educational institutions, must post one or more signs that are visible to all
19 persons – including workers, customers, and visitors – instructing them to wear face coverings as
20 required by this Article.

21 **Sec. 12-46. – Exceptions.**

22 The provisions of this Article shall not apply to:

- 23 (1) Courts of law; public utilities or federal, state, county, or city operations; medical
24 providers, facilities, or pharmacies; congregate living centers or facilities; group homes
25 and residential drug and/or mental health treatment facilities; shelters; airport travel;
26 election offices; polling places on an election day; or to residential dwelling units.
- 27 (2) Children under the age of five (5). While children ages three (3) and four (4) may wear a
28 face covering if that child can remove the face covering without assistance, guidance
29 from the CDC states that children two (2) years old and under should never wear a face
30 covering due to the risk of suffocation.
- 31 (3) Federal and state activities. Nothing in this Article shall be construed to limit, prohibit,
32 or restrict in any way the operations of the federal or state government or the movement
33 of federal or state officials in the city while acting in their official capacity, including
34 federal and state judicial, legislative, and executive staff and personnel.
- 35 (4) Individuals at their workplace when wearing a face covering would create a job hazard
36 for the individual or others, as determined by federal, state, or local regulators or
37 workplace safety and health standards and guidelines.

- 1 (5) Individuals who are alone in an office, room, a vehicle, the cab of heavy equipment or
2 machinery, or an enclosed work area. In such situations, the individual should still carry
3 a face covering to be prepared for person-to-person interactions and to be used when the
4 individual is no longer alone.
- 5 (6) Individuals who are seated at a desk or standing at a stationary work station, provided
6 that the desk or work station has a solid Plexiglas or plastic barrier installed upon it
7 which cannot be moved.
- 8 (7) Individuals who are officiating at a religious service.
- 9 (8) Individuals communicating with other individuals who are deaf or hard of hearing or
10 who have a disability, medical condition, or mental health condition that makes
11 communication with that individual while wearing a face covering difficult, provided
12 that minimum social distancing of six (6) feet or more is maintained to the extent
13 possible between persons who are not members of the same household.
- 14 (9) Individuals who are engaged in activities, such as swimming or showering, where the
15 face covering will get wet.
- 16 (10) Individuals who are exercising in an indoor business or indoor space such as a gym or
17 fitness center, while the level of exertion makes it difficult to wear a face covering,
18 provided that minimum social distancing of six (6) feet or more is maintained at all
19 times.
- 20 (11) Individuals in an indoor premises that is generally open to the public while playing a
21 musical instrument that cannot be played when a face covering is worn, provided that a
22 minimum social distancing of six (6) feet or more is maintained at all times.
- 23 (12) Public safety workers actively engaged in a public safety role, including but not limited
24 to law enforcement personnel, fire fighters, or emergency medical personnel, in
25 situations where wearing a face covering would seriously interfere in the performance of
26 the individual's public safety responsibilities.

27 **Sec. 12-47. – Public Nuisance Declared.**

28 Any individual or entity which maintains premises that are open to the general public who fails
29 to comply with the requirements of Section 12-44, above, is hereby declared to be a nuisance and
30 a danger to the public health, safety, and welfare.

31 **Sec. 12-48. – Application.**

32 The provisions of this Article shall only apply to all persons and property within the corporate
33 limits of the City of Omaha and shall not extend into the three (3) mile extraterritorial
34 jurisdiction of the City.

35 **Sec. 12-49. – Penalty.**

36 Any individual or person who is found to have violated any of the provisions of this Article shall
37 be guilty of a misdemeanor for each offense and shall be subjected to a fine of \$25.00. Each
38 instance of violation of this Article may be considered a separate offense.

1 **Sec. 12-50. – Civil Abatement.**

2 In addition to any other penalty sought or obtained under this Article or other applicable law, the
3 City Attorney may institute injunctive or other appropriate civil proceedings necessary to obtain
4 compliance with this Article or to abate any nuisance resulting from violations of this Article.

5 **Sec. 12-51. – Sunset Provision.**

6 The requirements imposed by this Article shall expire and terminate at 11:59 p.m. on September
7 15, 2020, unless otherwise extended by ordinance of the City Council.

8 **Sec. 12-52. – Report Required.**

9 The Health Director of the City of Omaha shall, on every Tuesday while the provisions of this
10 Article remain in effect, prepare a report to be delivered to the Mayor and the City Council. The
11 report shall contain information from the prior week on the status of COVID-19 infections in the
12 City of Omaha, and shall include information on the current number of cases in the city, the
13 number of new cases diagnosed, the number of tests performed, the positivity rate of those tests,
14 the number of new deaths that have occurred, the Metro Omaha area hospital occupancy rate, the
15 ventilator utilization rate, the COVID-19 hospitalization rate, a breakdown of cases by zip code,
16 and any such other information that the Health Director deems relevant to the spread of COVID-
17 19 within the City of Omaha.

18 Section 3. That Chapter 12, Article III, Sections 12-53 through 12-90 are hereby
19 reserved for future use.

20 Section 4. The sections, subsections, paragraphs, sentences, clauses, and phrases of this
21 Ordinance are severable, and if any section, subsection, paragraph, sentence, clause, or phrase of
22 this Ordinance shall be declared invalid, unenforceable, or unconstitutional by the valid
23 judgment or decree of a court of competent jurisdiction, such invalidity, unenforceability, or
24 unconstitutionality shall not affect any of the remaining sections, subsections, paragraphs,
25 sentences, clauses, or phrases of this Ordinance.

26 Section 5. This Ordinance, being emergency in nature, shall be in full force and take
27 effect immediately upon its passage.

INTRODUCED BY COUNCILMEMBER

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Chris Jerram, Pete Fastersen, Ben Craig APPROVED BY:

Jean Stothert 8/12/2020
MAYOR OF THE CITY OF OMAHA DATE

PASSED AUG 11 2020 7-0

ATTEST:

CAJ 8/12/2020
CITY CLERK OF THE CITY OF OMAHA DATE

APPROVED AS TO FORM:

R. J. [Signature] 08/12/2020
CITY ATTORNEY DATE